

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

KENNAN LEWIS WELLS,

Defendant-Petitioner.

Case No. 98-80994

Honorable Nancy G. Edmunds

ORDER GRANTING THE GOVERNMENT'S MOTION TO STAY LITIGATION [113]

This matter comes before the Court on the Government's motion to stay litigation pending the Supreme Court's decision in *Beckles v. United States*, No. 15-8544. For the reasons stated below, the motion to stay is GRANTED.

On May 17, 2000, Defendant was convicted of one count of conspiracy with intent to distribute a controlled substance in violation of 21 U.S.C § 846. He was sentenced by the Court to a term of 262 months, with an increased offense level based on a prior "crime of violence" conviction, as defined under § 4B1.2(a) of the United States Sentencing Guidelines.

On November 18, 2016, Defendant filed a motion to vacate his sentence under 28 U.S.C. § 2255. (Dkt. 109). Defendant argues that his sentence must be vacated in light of the Supreme Court's recent holding in *Johnson v. United States*, 135 S. Ct. 2551 (2015). In *Johnson*, the Supreme Court invalidated the violent crime residual clause of 18 U.S.C. § 924(e) as unconstitutionally vague. Defendant argues that *Johnson* applies to the identically-worded residual clause of the Sentencing Guidelines, § 4B1.2(a)(2). Although

the Sixth Circuit has extended *Johnson* to § 4B1.2(a)(2) of the Guidelines, see *United States v. Pawlak*, 822 F.3d 902 (6th Cir. 2016), it recently acknowledged that it is not clear whether to treat its decision in *Pawlak* as applying retroactively on collateral review. See *In re: Embry*, 831 F.3d 377 (6th Cir. 2016) . Because the Supreme Court "has agreed to resolve the point [this]Term in *Beckles v. United States*, No. 15-8544," the Sixth Circuit has asked district courts to hold these cases in abeyance pending the Supreme Court's decision in *Beckles*. *Id.* at 382 ("it makes the most sense to . . . ask the district courts to hold the cases in abeyance pending the Supreme Court's decision in *Beckles*.")

Accordingly, the Court follows the Sixth's Circuit's guidance and GRANTS the Government's motion to stay. The case is HEREBY STAYED pending the decision in *Beckles*.

SO ORDERED.

S/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: January 31, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 31, 2017, by electronic and/or ordinary mail.

S/Carol J. Bethel
Case Manager